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THE EXCISE LAW AND THE SALOON.

BY THE RIGHT REV. WILLIAM CROSWELL DOANE, BISHOP
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A STATEMENT somewhat casually introduced in an article in THE NORTH AMERICAN REVIEW for July has, I am glad to see, attracted more attention than anything else in the article, as I hoped it would.

The statement was this, "I am inclined to think that the clergy would be wise to begin an effort to wipe out all excise legislation from the statute books, and keep, only in the Penal Code, enactments which would punish drunkenness and the makers of it, the violation of Sunday, and the grosser evils of the liquor trade." This seemed to many people a rash statement and a suggestion of what, to say the least of it, was very questionable both in principle and in application, and I am not prepared to say that it is not rash and questionable; but I desire to make the suggestion a little fuller and clearer for purposes of discussion, because I am abundantly satisfied in my own mind that the political condition of the State of New York has reached a point that demands some heroic remedy. Bad as is the debauching of the people by unlimited and unrestricted liquor, the worst and most dangerous of all debauching of the people is the destruction of the political moral sense; and since it is true that politics have become so important to the liquor interest that it is to the advantage of the liquor men to elect our law-makers, and true that the liquor interest is so important to the politicians that it is necessary for them to submit to the dictation of representatives of that interest in the making of laws, it seems to me that we have arrived at a crisis when we might as well select Scylla as Charybdis on which to be wrecked.

I readily recognize the patent objections to the plan. In the

first place, it is of course true that the liquor dealers want legislation for other than mere excise questions ; but their demand for any kind of legislation would be largely lessened if the legislators were not entirely subject to the liquor power. It is true also that the saloons are of value to candidates for office, because the saloon-keeper is supposed to control the votes of the people who frequent his saloon ; but it is true also, over against this, that the saloon would cease to be the political centre, the place which controls the primary meetings often held in it, if the saloon ceased to depend for its existence upon legislative favor.

Then comes the great question of principle, whether the State has any right to allow an article which is capable of such infinite ruin and harm to be sold without any restriction at all. The *crux*, I confess, in my mind lies here. It has been considered always necessary to restrict in some degree the sale of dynamite and drugs, of poisons and gunpowder, and we should hardly be prepared to leave these open and free ; and there can be no question in the mind of any reasonable human being that more damage comes from the sale of liquor than from the sale of all these others combined; but it is, sometimes at any rate, wise, when no great moral principle is at stake, to consider the question of expediency and policy, and to seek rather to obtain important results than to insist upon a particular method of securing them.

Believing as I do that the use of intoxicating drinks can not by any possibility be prevented ; that it is a natural appetite ; that it is not in itself sin, but only sinful in abuse ; that horrible and hideous as the results of this abuse are, the only remedy lies in " the Gospel of the *grace of God* ;" that even if all manufacture and sale of liquor were prohibited, it would be against the divine plan of dealing with our human nature, which must be disciplined by the presence, that it may be strengthened against the power, of temptation ; I believe also that it is one of those many questions of political economy, which, if left alone, without artificial influence, would regulate itself by the well-known law of supply and demand.

There certainly are more saloons in our large towns than are needed to satisfy the thirst of the people. The increased number of these saloons is due to their political value, and if that were taken away I think the number of saloons would be at once diminished. If we could ever have secured the

application of the principle of high license, or a regulation of the number of saloons according to the number of the population in a certain district, we would have reached, I believe, the best cure for this great evil ; but an experience of twenty years in the capital of this State convinces me that that is impossible. That the Democratic party is more responsible for this condition of things than the Republican, is merely due to the fact that the Democratic party has been longer in power during these years than the Republican ; but as parties, both of them, whenever it suited their purposes, have been subservient to this liquor control ; so that the practical conclusion seems to me to be what was stated in the article to which I have referred, that “liquor ought to be removed from politics and politics from liquor, by ceasing to legislate on the question at all.”

There are other questions connected with the desperate hurt of the abuse of stimulants which, of course, can not be left without some correction and control. The Penal Code of the State of New York, either as it exists or as it can be amended, furnishes, I think, the place where these corrections and this control can be applied.

The Sunday law, for instance, as it has always pertained in the statute books of this State, forbids the opening of shops and stores on Sunday, and would include, of course, among these shops and stores the places in which liquor is sold. It is only necessary to insist upon the closing of all places of business on the Lord’s Day (with the present exceptions allowed), and to enforce the present law against their opening, in order to secure this important result. See Penal Code, Chap. I., Title X., Section 267.

Section 266, Chap. I., Title I. of the Penal Code, which forbids trades, manufactures, etc., on the first day of the week, has in it a statement to which I think some consideration ought to be given, even though it be somewhat aside and apart from the subject of this article. It refers to “the repose” and “religious liberty” of the community.

I have so often, in discussion before committees of the legislature, heard the representative of the liquor interests,—generally a portly and well-preserved German, bearing evidence both in his speech and in his look of a cordial appreciation of his national beverage,—insist that all legal observance of the Lord’s Day was

a violation of liberty, that it seems worth while, just for a moment, to suggest that, in the first place this is *not* primarily and in its essence a religious question at all, because the observance of one day in the week as a day of rest is primeval, and antedates all revelation of religious law ; and because, in the next place, there is no attempt to enforce any religious observance upon those who do not desire it for themselves ; but only a protection for those who do desire freedom of religious worship, not to be disturbed and distracted in it by the intrusion into the quietness of an Anglo-Saxon Sunday of either the occupations, the amusements, or the offences of the ordinary days of the week.

The laws in the Penal Code regulating the care and control of minors and of people of weak or unsound mind would cover the crime of the sale of liquor to such as these ; and drunkenness, whether boisterous or dangerous to life, ought to be punished by the general law of penalties. If, in addition to these, men who have or sell any adulterated liquor were prosecuted as severely as if they have or sell any adulterated drug (see Penal Code, Title XII., Sec. 407), we should go very far towards reaching what is perhaps the most serious cause of intemperance, namely, the quality far more than the quantity of the stuff that is drunk ; and it seems to me that in the laws regulating the holding of elections there might easily be a clause inserted which would forbid the sale of liquor on election days within a fixed vicinity of the polling place.

I am not absolutely certain that if it were in my power to make this change I should feel safe in doing it, because I should want to be surer than I am of the legal sufficiency of my argument ; but I am well satisfied that the suggestion is worth consideration and discussion by those who are better able to judge of the applicability of law than I am. There is one advantage at least, that if such a condition of things as this were brought about we should have, working together upon one plane for a better condition of things, the temperance people and the total abstinence people ; for it is a well-known fact, that a consistent prohibitionist cannot consent to even an effort to improve the Excise law, because by so doing he recognizes what to him is impossible, the right of the State to recognize liquor-selling as a legitimate occupation.

It ought not to be omitted from the consideration of this sub-

ject that as the law at present stands there is such an interdependence between police administration and political influence that the power of the liquor dealer is felt, not only in the making but in the execution of the Excise law. And it would be well to remove the police from the politicians, and both from the power of the liquor interest.

There are two matters of such grave consequence that some mention of them ought to be made in this discussion. In the first place, it is true that the fees derived from the sale of licenses are appropriated by law to important objects, under the direction of the Supervisor ; "applied," as the law says, "to the payment of the ordinary expenditures payable from the general fund of the city or town respectively, unless otherwise provided by a special or local law." The answer, I think, to this is perfectly plain. In the first place it is both the duty and within the power of every community to provide for its ordinary expenditures without resort to this method of securing funds, and, in the next place, the same statement really applies to this point that has been already made in regard to the use of fees from the Louisiana lottery. *If* under the present system the saloon power is increased, no amount of money derived from it, for any purpose, no matter how good, can be the excuse for its maintenance.

The only remaining difficulty *that I can see* is that it may be said that to do away with an excise law would remove what is called the civil damage act; of which I have simply this to say, that both in the act in relation to Excise, which is chapter 403 of the Laws of New York, passed in 1892, and in section 40 of the present Excise law, all value is absolutely taken away from what I nevertheless believe to be an important provision. The only recovery that can be "had in any civil action of the damages suffered by reason of the intoxication of any person," etc., is in case a written notice forbidding such sale has been given to the person selling the intoxicating drink.

It must have been patent even to the framers of the law that this absolutely emptied the act of all value, because in any town or city, especially in the largest cities, it is utterly impossible for notice to be given by anybody to *every* saloon keeper, and equally impossible to confine drunkards to any *single* saloon.

I believe, therefore, that the remedy for this is to add to the Penal Code a statute which shall make the sale of intoxicating

drink to an habitual drunkard or to a drunken man a crime, punishable by the closing of the saloon for a definite period, in case a judgment is recovered by any person who chooses to prosecute the saloon keeper for a penalty, which should be imposed in addition to the closing of the saloon.

If I seem to write without the courage of my own convictions, it is merely that I realize that a layman who is neither lawyer nor legislator may fail to see very real difficulties. But I am convinced, *so far as I can see*, that we should be better off than we are now, with *no* Excise law; and my only doubt about making the change is, that I would rather wait until wiser men have probed the question more thoroughly.

I ought, I think, to say that my object in asking the insertion of this article in THE NORTH AMERICAN REVIEW is simply to bring the matter before the people for discussion; and that I only write under a very deep sense of the desperate evil of the moral, physical, political, and personal degradation of the existing condition of things.

WILLIAM CROSWELL DOANE.